

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICKY HICKS,	§
	§ No. 585, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0410023146A
Plaintiff Below-	§
Appellee.	§

Submitted: November 22, 2010

Decided: January 19, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 19th day of January 2011, upon consideration of the opening brief, the State's motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Ricky Hicks, filed this appeal from the Superior Court's denial of his motion seeking correction of an illegal sentence or, alternatively, postconviction relief. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Hicks' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Hicks in 2005 of Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, and Possession of Drug Paraphernalia. The Superior Court sentenced Hicks as a

habitual offender to life imprisonment plus one year. Hicks' convictions and sentence were affirmed on direct appeal.¹ Thereafter, Hicks filed a motion for postconviction relief in 2007 alleging ineffective assistance of trial counsel. The Superior Court denied Hicks' motion,² and his appeal from that order was dismissed as untimely.³

(3) On May 24, 2010, Hicks filed a motion seeking correction of an illegal sentence or, alternatively, postconviction relief. Hicks alleged that he was denied due process because: (i) he was not eligible for habitual offender sentencing; (ii) he did not receive proper notice of the State's motion to declare him a habitual offender; and (iii) he did not have a proper hearing on his status as a habitual offender. Additionally, Hicks alleged that his trial counsel was ineffective for failing to raise these claims. The Superior Court denied Hicks' motion.⁴ This appeal followed.

(4) After careful review, we find no merit to the issues Hicks raises on appeal. The record reflects that the State filed its motion to declare Hicks a habitual offender several weeks before Hicks' scheduled sentencing date.⁵ The record also reflects that Hicks had the requisite number of prior felony convictions

¹ *Hicks v. State*, 913 A.2d 1189 (Del. 2006).

² *Hicks v. State*, 2008 WL 73711 (Del. Super. Jan. 7, 2008).

³ *Hicks v. State*, 2009 WL 189052 (Del. Jan. 23, 2009).

⁴ *Hicks v. State*, 2010 WL 3398470 (Del. Super. Aug. 17, 2010).

⁵ See Del. Code Ann. tit. 11, § 4215(b) (providing, among other things, that the Attorney General may file a habitual offender motion "after conviction and before sentence").

to qualify him for habitual offender status.⁶ Thus, Hicks' claims of insufficient notice or insufficient predicate felony offenses have no factual basis.⁷ Moreover, Hicks raised no objection to having his sentencing hearing on the same day the Superior Court considered the State's habitual offender motion, nor did he file a timely motion for correction of sentence imposed in an illegal manner within 90 days of the imposition of sentence.⁸ We find no prejudice to Hicks resulting from the Superior Court's consideration of the habitual offender motion and then immediately proceeding to sentencing.⁹ Having found no merit to any of Hicks' claims about his habitual offender sentencing, we consequently find no merit to his claim that his trial counsel was ineffective for failing to raise these arguments below.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶ Hicks had two prior convictions for possession with intent to deliver cocaine in 2002 and 2004.

⁷ See Del. Code. Ann. tit. 11, § 4214(b) (2007).

⁸ See *Walley v. State*, 2007 WL 135615 (Del. Jan. 11, 2007) (holding that a challenge to the timing of the habitual offender status hearing was, in fact, a motion for correction of sentence imposed in an illegal manner that was required to be filed within 90 days of sentencing).

⁹ See *Kirby v. State*, 1998 WL 184492 (Del. Apr. 13, 1998) (holding that the burden is on defendant to establish prejudice when Superior Court holds habitual offender status hearing on the same day as sentencing).